WATERS AND WATERCOURSES — RIGHTS OF NON-RIPARIAN OWNERS. — The plaintiffs, neither owning nor leasing any land abutting on a river, leased from a power company the right to draw water from the power-canals which it had dug above its dam upon the river. A city higher up the stream was impliedly authorized by statute to drain its sewage into the stream. *Held*, that the plaintiffs can recover in an action against the city for pollution of the water. *Doremus* v. *City of Paterson*, 55 Atl. Rep. 304 (N. J., C. A.).

For a discussion of the decision in the lower court, see 16 HARV. L. REV. 145.

WILLS — CONSTRUCTION — EXTRINSIC EVIDENCE. — The testator made certain pecuniary bequests by his will. Subsequently he made certain smaller pecuniary bequests to several of the same legatees without stating whether these were to be substitutionary or cumulative. *Held*, that parol evidence that the testator knew that his estate was decreasing and that it might not be able to meet all the bequests in the will, is admissible to prove that the legacies in the codicil were intended to be substitutional. *Gould* v. *Chamberlain*, 68 N. E. Rep. 39 (Mass.).

Extrinsic evidence is necessarily admitted to identify the persons and things referred to in any writing. *Webster* v. *Morris*, 66 Wis. 366. But apart from this, the general rule is that a will, like other formal writings, must be construed solely by an inspection of the instrument itself; for otherwise no man could draw up his will with any certainty as to its effect. *Jackson* v. *Alsop*, 67 Conn. 249. An apparent exception exists where parol evidence is admitted to rebut an equitable presumption. *Livermore* v. *Aldrich*, 59 Mass. 431. The exception, however, is apparent only; for the evidence is admitted only to uphold the literal interpretation of the document by rebutting the equitable presumption to the contrary; and it is not admitted to support the equitable presumption in contradiction of the writing *Hurst* v. *Beach*, 5 Madd. 351. As the evidence in the principal case was offered to rebut the strict construction of the documents, it would seem that it ought to have been excluded. *Wilson* v. *O'Leary*, 7 Ch. App. 448. There are, however, previous *dicta* which appear to support the position of the court. See *Crocker* v. *Crocker*, 28 Mass. 252, 256.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

CLUB TRUSTEES' RIGHT TO INDEMNITY. — It has been held by the Judicial Committee of the Privy Council that a *cestui que trust* of stock is personally bound to indemnify the trustee against expenses incurred by reason of the latter's legal title. *Hardoon* v. *Belilios*, [1901] A. C. 118. The same court recently decided that club trustees have no rights of indemnity against a member for liabilities incurred under a lease after the dissolution of the club. *Wise* v. *Perpetual Trustee Co. Ltd.*, [1903] A. C. 139. The court distinguished the cases on the ground that the recognized terms of club membership limit the liability of each member to the amount of his subscription. With this distinction a recent writer takes issue. *Club Trustees' Right to Indemnity: A Criticism of Wise* v. *Perpetual Trustee Co. Ltd.*, by T. Cyprian Williams, 19 L. Quart. Rev. 386 (Oct., 1903). The author clearly shows that the cases relied on by the court hold merely that no power is given to club officers to pledge the credit of members beyond the amount of dues payable. If, then, he argues, the ordinary liability incident to equitable ownership be lacking here, it must be because of some understanding between the parties. But no such agreement can possibly be implied in fact since the members derive all the benefit and the trustees none from the transaction. This criticism seems well founded. But Mr. Williams also suggests that any such agreement would be void as against the policy of the law, because it separates the advantages from the burdens of property. But this position, as stated, seems clearly untenable. See *Ex parte Chippendale*, 4 De G., M. & G. *19, *52.

The author would, however, support the actual decision on two grounds: first, because the claim made was based on the theory of a several liability in each club member; and, second, because the club had been dissolved before the definite claims against the trustees matured. The latter distinction seems unsound. Mr. Williams argues that, since each member may resign at will and so free himself from all liabilities not already ripened into definite claims, all the members may by dissolving the club obtain a like immunity. But the conclusion does not follow from the premise. The equitable interest of a single resigning member passes by mutual consent to the remaining members. But the whole body of members cannot without finding a consenting transferee divest themselves of the equitable title any more than they could free themselves of a corresponding legal title. With the equitable interest the liability incident thereto would, then, survive the dissolution.

Mr. Williams is in sympathy with the doctrine of *Hardoon* v. *Belilios*, the correctness of which he assumes. The case has not, however, escaped attack. It has been urged that the trustee voluntarily accepted the responsibilities of a legal owner, and if he wished rights not belonging to him as such, he should have contracted for them. PERRY, TRUSTS, 5th ed. § 485, (a). But this involves a *petitio principii*. What he contemplated was a legal ownership *in trust*, with whatever rights are incident to such a position. The very question is as to the extent of those rights. The trustee cannot compel the *cestui* to assume the legal title. *Moore* v. *Greg*, 2 Ph. 717. It is said that the result is the same if the *cestui* is to be indirectly exposed to the burdens of legal ownership. But it should be remembered that pecuniary liability is only one of the burdens of legal ownership; and even admitting the soundness of the argument, it is perhaps a sufficient answer that to compel the trustee to retain the trust and yet give him no right of indemnity against the *cestui* is intolerably harsh. *Hardoon* v. *Belilios* has been regarded as an innovation. Yet it is undoubted law that where the trust was undertaken at the *cestui's* request the personal right against him exists. *Jervis* v. *Wolferstan*, L. R. 18 Eq. 18. *Hobbs* v. *Wayet*, 36 Ch. D. 256. These cases have been explained on the ground of implied contract. But in the ordinary case the possibility of a liability beyond the value of the *res* is not in fact contemplated by either party. The true principle would seem to be that a *cestui* when he accepts the equitable title must be held to take upon himself the liabilities. See *Whittaker* v. *Kershaw*, 45 Ch. D. 320. Natural justice demands that the burdens should fall upon him who reaps the benefits.

PUBLICATION OF BERTILLON MEASUREMENTS AND PHOTOGRAPHS AS A BASIS FOR AN ACTION OF LIBEL. — The Bertillon system of measurements and photographs has become widely established for the discovery and identification of criminals. So far as the subjects are really suspicious characters, the system cannot be criticised; but occasionally it is used upon a perfectly innocent man who has been accused and acquitted of crime. A recent writer calls this situation a "crying evil," and argues that such a victim should recover in an action for libel against the sheriff. *Publication of Bertillon Measurements and Photographs of Prisoners, Innocent or Acquitted of the Crimes Charged against Them*, Anon., 57 Central L. J. 261 (Oct. 2, 1903). The article assumes that there is no trespass to the person or invasion of any right of privacy in taking the photographs. A writ of mandamus to compel the sheriff to destroy or surrender the data has been denied, because such destruction or surrender was not the sheriff's official duty. *In re Molineux*, 83 N. Y. Supp. 943. An injunction to restrain the sheriff from circulating the picture has been also refused on the ground that in the United States equity will not enjoin the publication of a libel. *Owen* v. *Partridge*, 82 N. Y. Supp. 248. With these decisions the article agrees, but insists that the sheriff should be liable in an action for libel for publishing the plaintiff's photograph in a connection which implies that he is at least to be suspected of crime.